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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,846	03/29/2002	Lewis Colman	6727/0K096	1224
7278	7590	11/08/2004	EXAMINER	
DARBY & DARBY P.C.			NATNITHITHADHA, NAVIN	
P. O. BOX 5257			ART UNIT	PAPER NUMBER
NEW YORK, NY 10150-5257			3736	

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<b>Application No.</b> 10/009,846	<b>Applicant(s)</b> COLMAN ET AL.	
	<b>Examiner</b> Navin Natnithithadha	<b>Art Unit</b> 3736	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 July 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-24, 26-48 and 66 is/are pending in the application.
- 4a) Of the above claim(s) 1-20, 25 and 49-65 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-37, 40, 41, 43 and 44 is/are allowed.
- 6) ☒ Claim(s) 21-24, 27, 38, 42, 45-48 and 66 is/are rejected.
- 7) ☒ Claim(s) 26, 28, 29 and 39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01132004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claim 48 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 48, it is not clear as to what structural element of the calibration checking device is being claimed.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21, 22, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Porter et al, US 4,926,164 A.

In regards to claims 21 and 22, Porter teaches a device 1 mandating calibration after expiration of a number of tests (see col. 4, lines 25-32). In the event that 750 [breath] tests are conducted without a calibration check, the device will assume interlock conditions where the visual and audible alarms are initiated (enabling mechanism).

As to claim 27, it is inherent that Porter's interlock conditions are electronic signals to the breath tester device 1.

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3. Claims 21, 23, 27, 38, 42, and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Porter et al, US 4,926,164 A.

In regards to claim 21, Bathe teaches a calibration device (see fig. 2) having an enabling mechanism (control panel) for activating the calibration mode (see col. 4, lines 15-26).

As to claims 23 and 66, Bathe teaches the device is operative to track the time between calibrations or track the time of a calibration cycle (See col. 4, lines 24-26).

As to claim 27, Bathe teaches the enabling mechanism is an electronic signal ("perform calibration signal") (see fig. 2 and col. 4, line 22).

As to claim 38, Bathe teaches releasing a calibration gas (see col. 4, line 15).

As to claim 42, Bathe teaches an enabling mechanism is actuated by means of an integrated circuit (control panel) (see col. 4, line 23).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 24 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al, US 4,926,164 A as applied to claim 21 above, and further in view of Sheehan, US 5,357,971 A.

As to claims 24 and 45, Porter does not teach a filter for removing fluids from a gas to be analyzed. However, this element is well known in the art at the time the invention was made. For example, Sheehan teaches a filter 45 for removing undesired selected components from a gas sample (see fig. 1 and col. 7, lines 62-66).

5. Claims 24 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bathe, US 5,752,504 A as applied to claim 21 above, and further in view of Sheehan, US 5,357,971 A.

As to claims 24 and 45-47, Bathe does not teach a filter for removing fluids from a gas to be analyzed. However, this element is well known in the art at the time the invention was made. For example, Sheehan teaches a filter 45 for removing undesired selected components from a gas sample (see fig. 1 and col. 7, lines 62-66).

#### ***Allowable Subject Matter***

6. Claims 30-37, 40, 41, 43, and 44 are allowed.

7. Claims 26, 28, 29, and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter:

As to claim 26, the prior art of record does not teach an enabling mechanism for enabling operation of a gas analyzer operated by a filter.

As to claims 28 and 29, the prior art of record does not teach an enabling mechanism for operative to ensure proper location of the calibration checking unit.

As to claim 39, the prior art of record does not teach the enabling mechanism is actuated by release of a calibration checking gas.

As to claims 30-37, 40, 41, 43, and 44, the prior art of record does not teach a calibration checking device including a count actuating mechanism for counting the number of calibration tests performed with the calibration checking device.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (703) 305-2445. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

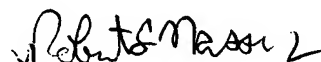
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Navin Natnithithadha  
Patent Examiner  
GAU 3736  
October 28, 2004



ROBERT L. NASSER  
PRIMARY EXAMINER